

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MARILYN MARGULIS	)	
	)	
Plaintiff,	)	Case No. 4:17-1355
v.	)	
	)	St. Louis County Circuit Court
PROBITY BROTHERS, LLC,	)	State Case No. 17SL-CC00935
	)	
and	)	Jury Trial Demanded
	)	
MATHEW T. BROWN,	)	
	)	
and	)	
	)	
JOHN DOES 1-10	)	
	)	
Defendants.	)	

**NOTICE OF REMOVAL**

COME NOW Defendants Probity Brothers, LLC and Matthew T. Brown, (collectively, “Defendants”), by and through the undersigned counsel, and hereby give Notice of Removal of this cause of action to the United States District Court for the Eastern District of Missouri, Eastern Division. In support of said Notice of Removal, Defendants hereby state as follows:

**PROCEDURAL STATUS OF THE CASE**

1. On or about March 13, 2017, Plaintiff commenced this action by filing her Petition in the Circuit Court of St. Louis County, Missouri, Case No. 17SL-CC00935.
2. The Circuit Court of St. Louis County, Missouri issued its summons on or about March 14, 2017.
3. Defendant Matthew T. Brown was served with the Summons and Petition on March 22, 2017. Defendant Probity Brothers, LLC, has not yet been served, but consents to this Removal. Probity Brothers, LLC will waive service once the matter has been removed.

4. Defendants have not yet filed an answer to Plaintiff's Petition.

5. The Notice of Removal is being filed in the record office of the Clerk of the United States District Court for the Eastern District of Missouri.

### **BACKGROUND**

6. Plaintiff's Petition alleges Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* Plaintiff's Petition further alleges Defendants violated the Missouri Merchandising Practices Act. RSMo. § 407.1098 *et seq.* Plaintiff seeks \$97,500 in monetary damages for violating the National and Missouri Do Not Call Lists. Plaintiff also requests injunctive relief. A copy of said Petition is contained within Exhibit A attached hereto and is incorporated by reference.

### **BASIS FOR FEDERAL COURT ORIGINAL JURISDICTION**

7. Pursuant to 28 U.S.C. § 1441(a), any civil action filed in state court over which the Federal District Courts would have original jurisdiction may be removed.

8. Plaintiff is seeking recovery for violations of the Telephone Consumer Protection Act, ("TCPA"), a federal statute. 47 U.S.C. § 227, *et seq.*

9. The district courts have original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States, including those arising under TCPA. 28 U.S.C. § 1331; *Mims v. Arrow Financial Services, LLC*, 565 U.S. 368, 377, 387 (2012).

9. Further, 28 U.S.C. § 1337(a) provides Federal District Courts shall have original jurisdiction of any civil action arising under any Act of Congress regulating commerce.

10. As the Telephone Consumer Protection Act is an Act of Congress regulating commerce, this court has original jurisdiction over Plaintiff's claims.

### **PROPRIETY OF REMOVAL**

11. This Notice of Removal is timely because it is filed within thirty (30) days of Defendants' receipt of the petition in accordance with 28 U.S.C. § 1446(b).

12. This court has original jurisdiction over Plaintiff's TCPA claim under 28 U.S.C § 1331.

13. This matter is properly removable under 28 U.S.C. § 1441, and is not barred by 28 U.S.C. § 1445.

14. This Court has supplemental jurisdiction over Plaintiff's Missouri Merchandising Practices Act claim pursuant to 28 U.S.C § 1367(a) because all of Plaintiff's claims are so related they form part of the same case or controversy.

15. Pursuant to 28 U.S.C. § 1446(a), Defendants have attached as Exhibit A a copy of all process, pleadings and orders served upon Defendants in this matter.

16. Pursuant to 28 U.S.C. §1446(a) and (d), Defendants will file a copy of this Notice of Removal with the Circuit Court of St. Louis County, Missouri, will provide prompt notice to all adverse parties, and will file proof of service of all notice and filings with the Clerk of the United States District Court for the Eastern District of Missouri.

WHEREFORE, Defendants remove the above-captioned matter from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri.

Respectfully submitted,

/s/ Jeffrey C. Klaus  
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*Attorneys for Probity Brothers, LLC and  
Matthew T. Brown*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was filed and served via the Court's electronic filing system this 19<sup>th</sup> day of April, 2017.

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